

**Nursing and Midwifery Council
Fitness to Practise Committee**

Substantive Order Review Hearing

26 May 2020

Virtual Hearing

Name of registrant: Mrs Margaret Miller

NMC PIN: 81H0008S

Part(s) of the register: Sub Part 1
RN1: Adult nurse (16 July 1990)

Sub Part 2
RN7: General nurse (7 December 1981)

Area of Registered Address: England

Type of Case: Misconduct

Panel Members: Michael Murphy (Chair, Registrant member)
Helen Houlton (Registrant member)
Christine Moody (Lay member)

Legal Assessor: David Clark

Panel Secretary: Leigham Malcolm

Mrs Miller: Not present and not represented

Nursing and Midwifery Council: Represented by Mr Assad Badruddin, NMC
Case presenter

Order being reviewed: Suspension Order (12 months)

Fitness to Practise: Impaired

Outcome: Striking-off Order, to come into effect at the
end of 1 July 2020 in accordance with Article
30 (1)

Service of notice of hearing

The panel was informed at the start of this hearing that Mrs Miller was not in attendance nor was she represented in her absence.

The panel was informed that notice of this virtual hearing was sent to Mrs Miller via email on 17 April 2020 in accordance with Rules 34(1)(c) of the recently amended Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (the Rules).

The panel accepted the advice of the legal assessor. It bore in mind that the notice of hearing set out that it would be conducted virtually, due to the current COVID-19 pandemic, and provided details of the date and time of the hearing. It also bore in mind that amongst other things, the notice of hearing also provided information about Mrs Miller's right to participate, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of the information available, the panel was satisfied that the notice period was reasonable in all the circumstances of this case and was satisfied that notice had been served in compliance with the Rules.

Proceeding in the absence of Mrs Miller

The panel then considered proceeding in the absence of Mrs Miller. The panel was mindful that the discretion to proceed in absence is one which must be exercised with the utmost care and caution.

Mr Badruddin, on behalf of the Nursing and Midwifery Council (NMC), informed the panel that a NMC Case Officer had contacted Mrs Miller on 20 May 2020 to discuss her participation at this hearing. He referred the panel to a record of that telephone conversation in which Mrs Miller stated that she 'did not want to get involved in any way'.

The panel considered all of the information before it, together with the submissions made by Mr Badruddin. The panel accepted the advice of the legal assessor. It took account of the NMC's communication with Mrs Miller and her stated intention not to get involved in today's hearing.

In the circumstances, the panel was satisfied that Mrs Miller had been sent notice of today's hearing and that she was aware of it. The panel formed the view that she had chosen voluntarily to absent herself. The panel had no reason to believe that an adjournment would result in Mrs Miller's attendance. Having weighed the interests of Mrs Miller with those of the NMC and the public interest in an expeditious disposal of this hearing the panel determined to proceed in Mrs Miller's absence.

Decision and reasons on review of the current order

The panel decided to impose a Striking-off Order This order will come into effect at the end of 1 July 2020 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a suspension order originally imposed by a Fitness to Practise panel on 31 May 2019 for 12 months. The current order is due to expire at the end of 1 July 2020.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charges found proved which resulted in the imposition of the substantive order were as follows:

That you, a registered nurse, whilst employed as the Clinical Lead of Marie Stopes International Ealing Clinic, on 21 January 2012 between 19:00 and 20:30:

- 1. Failed to seek a clinical review for Patient A when this was clinically required;*
- 2. Did not conduct appropriate and/or adequate observations of Patient A as required;*
- 3. Allowed Patient A to be discharged when she was displaying signs that she was not medically fit for discharge;*
- 4. By your conduct at charges 1, 2 and/or 3 caused Patient A to lose a chance of survival.*

AND, in light of the above your fitness to practise is impaired by reason of your misconduct.

The substantive panel determined the following with regard to impairment:

The panel next went on to decide if, as a result of this misconduct, Mrs Miller's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession. In this regard the panel considered the judgement of Mrs Justice Cox in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) in reaching its decision, in paragraph 74 she said:

In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.

Mrs Justice Cox went on to say in Paragraph 76:

I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health,

conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d. ...*

The panel finds that the first two limbs of the Grant “test” above are engaged in this case. Mrs Miller has clearly acted in the past as to put a patient at an unwarranted risk of harm; a risk which was unfortunately realised. Furthermore her actions and failings have brought the profession into disrepute.

The panel considered that Mrs Miller’s failings were remediable, although not necessarily easily. The panel were not assisted by Mrs Miller’s absence from proceedings or lack of engagement or communication. It had no material from her directly to speak to her account of events, the lessons which she may have learned, or what steps she may have undertaken to remediate her practice or demonstrate insight.

In the absence of this information, the panel had no option but to conclude that there existed a real risk of repetition of Mrs Miller’s misconduct.

The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. The panel bore in mind the seriousness of the charges found proved, and Mrs Miller's position as the senior nurse. The panel determined that, in this case, a finding of impairment on public interest grounds was required.

Having regard to all of the above, the panel was satisfied that Mrs Miller's fitness to practise is currently impaired, on grounds of both public protection and public interest.

The substantive panel determined the following with regard to sanction:

The panel has considered this case very carefully and has decided to make a suspension order, for a period of 12 months. The effect of this order is that the NMC register will show that Mrs Miller's registration has been suspended.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and took into account the submissions made by Mr Harper, on behalf of the NMC. It considered the NMC Sanction Bid (12 month suspension order), but was not bound by this suggestion. The panel accepted the advice of the legal assessor. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the Sanctions Guidance ("SG") published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

The panel considered the aggravating factors in this case to be as follows:

- *The panel has seen no evidence of any insight or remediation on Mrs Miller's part;*
- *Mrs Miller's conduct put patients at a significant risk of harm;*
- *Mrs Miller was the senior nurse on shift, and Clinical Lead of the Clinic*
- *Mrs Miller was experienced in the field of gynaecological nursing, and should have been acting as a role model to other members of staff; and*
- *The charges found proved are serious.*

The panel considered the mitigating factors in this case to be as follows:

- *The panel has heard evidence that the local procedures in place at the Clinic concerning post-operative care and observations were inadequate;*
- *There were clear staffing and resource difficulties on this particular shift in 2012; and*
- *Mrs Miller's capacity to escalate concerns appropriately was restricted by the system in place at the Clinic at the time.*

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action. Such a sanction would not appropriately protect the public.

Next, the panel considered whether a caution order would be appropriate in the circumstances. The panel considered Mrs Miller's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order. Such a sanction would not appropriately protect the public.

The panel next considered whether placing conditions of practice on Mrs Miller's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel is of the view that it would be very difficult to formulate practical or workable conditions at this time, given the nature of the charges in this case. The misconduct identified in this case was not something that can be easily addressed through retraining, particularly given the nature and breadth of Mrs Miller's misconduct. The panel also considered that it had no information to indicate a willingness on the part of Mrs Miller to engage with any conceivable conditions of practice. Furthermore the panel concluded that the placing of conditions on Mrs Miller's registration would not adequately address the seriousness of this case; the public interest engaged; and would not protect the public at this time.

The panel then went on to consider whether a suspension order would be an appropriate sanction.

The panel considered that, in this case, Mrs Miller's misconduct was not fundamentally incompatible with remaining on the register. It took into account that Mrs Miller's misconduct involves a single incident, a single patient, and a single day; the panel also bore in mind that Mrs Miller is a senior nurse of long-standing, with a previously unblemished career. The panel also noted that the local procedures at the Clinic in 2012 were inadequate. The panel had no evidence before it of any deep-seated personality or attitudinal problem. It also had no evidence before it that Mrs Miller had repeated this misconduct; the panel did bear in mind that Mrs Miller has not been practising as a nurse for some time. The panel reminded itself of its finding that there remained a risk of repetition of Mrs Miller's misconduct, and considered that it had no evidence before it as to insight, remorse, or remediation.

Bearing in mind the principle of proportionality, the panel considered that a suspension order of sufficient duration would appropriately mark the seriousness of Mrs Miller's misconduct and address the wider public interest, while also adequately protecting the public.

The panel went on to consider whether a striking-off order would be proportionate in Mrs Miller's case. Taking account of all the information before it, the panel concluded that it would be disproportionate at this time to impose a striking-off order. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mrs Miller's case to impose a striking-off order, at this time. Such a sanction would not reflect the difficult environment in which these events took place; the panel considered it significant that there were systemic problems at the Clinic in 2012, which the panel understands have now been addressed.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause Mrs Miller. However this is outweighed by the public interest in this case.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

The panel determined that a suspension order for a period of 12 months was appropriate in this case to mark the seriousness of the misconduct, and adequately protect the public. This period will also give Mrs Miller time to reflect and to consider whether she wishes to return to nursing practice.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order. Any future panel may be assisted by:

- *Mrs Miller's engagement with the NMC, and attendance at any review hearing;*

- *A detailed reflective piece, written by Mrs Miller, demonstrating understanding of the impact of Mrs Miller's misconduct on patients, the profession as a whole, and the regard in which the public hold the nursing profession;*
- *Evidence of how Mrs Miller has been keeping up-to-date with current nursing skills and knowledge; and*
- *Relevant testimonials and references from current or recent employers, relating to either paid or voluntary work.*

Decision on current fitness to practise

The panel has considered carefully whether Mrs Miller's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant's suitability to remain on the register without restriction. In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. It has noted the decision of the last panel. However, it has exercised its own judgment as to current impairment.

The panel has had regard to all of the documentation before it and taken account of the submissions made by Mr Badruddin.

Mr Badruddin informed the panel that it was the NMC who contacted Mrs Miller on 20 May 2020 in relation to today's hearing and Mrs Miller has not made contact with the NMC since May 2018. He submitted that there is no evidence of any insight into Mrs Miller's misconduct nor any remediation. He submitted that, as there had been no change in the level of risk, Mrs Miller's fitness to practise remains impaired.

Given Mrs Miller's lack of demonstrable insight and remediation, Mr Badruddin invited the panel, at least, to impose a further period of suspension. He stated, however, that at this stage, it may be appropriate to impose a striking-off order, as there was no information to suggest that Mrs Miller will engage in these regulatory proceedings in the future. Therefore, a further period of suspension may not serve any useful purpose.

The panel heard and accepted the advice of the legal assessor.

In reaching its decision, the panel was mindful of the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether Mrs Miller's fitness to practise remains impaired. In addressing impairment the panel had regard to the test approved by Mrs Justice Cox in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin).

The panel noted that there has been a pattern of non-engagement by Mrs Miller. There was no evidence before the panel of any insight nor remediation. The panel considered there to be no change in the circumstances of Mrs Miller's case and it determined that the risk of repetition remained unchanged since the substantive hearing.

The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel had borne in mind that its primary function was to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that Mrs Miller's fitness to practise remains impaired.

Determination on sanction

Having found Mrs Miller's fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the NMC's Sanctions Guidance (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

The panel first considered whether to take no further action but concluded that this would be inappropriate in view of the seriousness of the case and the risk of repetition identified. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

The panel then considered whether to impose a caution order but concluded that this would be inappropriate in view of the risk of repetition identified. The panel also decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel considered imposing a conditions of practice order. However, it could not be satisfied that Mrs Miller would be willing or able to comply given her non-engagement, lack of any information around her current employment, and her stated intention to retire from the nursing profession in September 2020.

The panel next considered imposing a further suspension order. The panel noted that Mrs Miller has been provided with an opportunity to demonstrate insight and remediation and has failed to do so. The panel considered Mrs Miller to pose a risk to patients as well as the reputation of the profession given the severity of the charges found proved and her lack of insight, remediation and persistent non-engagement in these proceedings. The panel was of the view that cogent evidence would be required to show that Mrs Miller had addressed the regulatory concerns identified by the previous panel.

The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances. Whilst a further period of suspension would protect the public, it would not sufficiently address the wider public interest concerns. Mrs Miller's failure to engage with the regulatory process, her continuing lack of insight, and

her failure to take remedial steps all have the capacity to add further damage to the reputation of the profession.

The panel determined that it was necessary to take action to prevent Mrs Miller from practising in the future and concluded that the only sanction that would now be sufficient to protect the public and serve the public interest was a striking-off order.

This decision will be confirmed to Mrs Miller in writing.

That concludes this determination.